Appeals

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Appeals

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- *** The Department of Local Government Finance does not get involved in individual property tax assessments or appeals. The following information should not be construed as legal advice, and any legal questions or issues should be directed to your county attorney.

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I. **Definitions:**

- **Market Value-in-Use:** "The market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property."
- **Market Value:** "The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress."

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- **True Tax Value:** “In the case of agricultural land, the value determined in accordance with the Guidelines adopted by the Department of Local Government Finance. True Tax Value means market value-in-use as defined in this manual.”
- **Assessment Date:** “March 1 of any year.”
- **Valuation Date:** “The date as of which a property's value is estimated.” *The assessment date and valuation date are the same (e.g. March 1, 2015). **Please note: Per SEA 420-2014, the assessment date of real property will change to January 1 starting with the 2016-pay-2017 tax cycle. March 1 will remain the real property assessment date for the 2014-pay-2015 and the 2015-pay-2016 tax cycles.**

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- “True tax value” ≠ fair market value.
- “True tax value” = “market value-in-use” of a property for its current use, as reflected by the utility received from the property.
- IC 6-1.1-31-6(c) & Manual

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II. Legislative Update/Changes:

- HEA 1388; HEA 1603; SEA 423; SEA 436; and SEA 467
- Property Tax Assessment Appeals Fund: Section 2 of HEA 1603 introduces IC 6-1.1-15-10.5 to allow the fiscal officer of a taxing unit to establish a property tax assessment appeals fund ("fund").

  The source of money for the fund will be property tax receipts attributable to an increase in the taxing unit's tax rate caused by appeals that reduce the certified net assessed value in the taxing unit.

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Money in the fund can only be used to pay for expenses the county assessor incurs in defending an appeal of property located in the taxing unit and for refunds resulting from a property tax appeal (but not a correction of error). The balance in the fund may not exceed 5% of the amount budgeted by the taxing unit in a particular year.

Money deposited in this find is not considered miscellaneous revenue. As such, the taxing unit and the Department of Local Government Finance ("Department") must disregard any balance in the fund in determining taxing unit's levy, rate, and budget (except appropriations for funding appeals and refunds) for a particular calendar year.

Section 2 of HEA 1603 is effective January 1, 2016.

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Notices to Taxing Units of Pending Appeals: Section 3 of HEA 1603 adds IC 6-1.1-15-19 to require the county assessor to send quarterly notices to the fiscal officer of each taxing unit (including redevelopment commissions) affected by a property tax appeal.

This notice must include the following information:

1) The date on which a Form 130 or Form 133 was filed.
2) The name and address of the taxpayer who initiated the appeal.
3) The assessed value for the assessment date the year before the appeal, and the assessed value on the most recent assessment date.
4) The status of the taxpayer's appeal.

The notice may be provided in an electronic format.

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Township assessors must provide the county assessor with any information the county assessor requests that is necessary in order to provide the quarterly notices.

Section 3 of HEA 1603 is effective January 1, 2016.

- Agreements to Stipulate Assessed Value by Independent Appraisal: SEA 423 made several amendments to the law regarding appeals before the county property tax assessment board of appeals ("PTABOA").

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A. *Stipulation of Assessed Value*

Section 2 of SEA 423 introduces IC 6-1.1-15-2.5, effective July 1, 2015. This section allows a taxpayer and township assessor (if applicable) or county assessor ("assessor") to enter into a written agreement to:

1) forego a PTABOA hearing and directly appeal to the IBTR; or
2) stipulate to the assessed value of disputed property by way of an independent appraisal that the PTABOA will then use in its determination.

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This agreement must be entered into by both parties (i.e., in writing and signed by both parties) within 120 days after the taxpayer's notice of review was filed. Note that this agreement will not prohibit a taxpayer and assessor from resolving issues regarding the assessed value or deductions in an informal conference under IC 6-1.1-15-1(i). When the agreement is made, the assessor must immediately forward the agreement to the PTABOA.

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The agreement must include the following seven provisions:

1) The PTABOA must select three Indiana registered appraisers as potential appraisers to conduct an independent appraisal.
2) No later than 15 days after the PTABOA chooses the appraisers, the taxpayer and assessor may each strike one appraiser from the list of potential appraisers by providing written notice to the PTABOA of the name of the appraiser the party chooses to strike.
3) No later than 60 days after the date of the agreement, an independent appraisal must be conducted. If both the taxpayer and assessor have chosen to strike an appraiser from the PTABOA's list of potential appraisers, the remaining appraiser shall perform the appraisal.

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3) con't.
   If only one or neither of the parties has chosen to strike an appraiser from the list—that is, there are two or three appraisers who were not struck from the list—then the PTABOA will choose the appraiser who will perform the appraisal.
4) The appraisal must be:
   a) performed in accordance with the usual and customary professional standard for an Indiana registered appraiser;
   b) notarized; and
   c) filed with the PTABOA no later than three days after the appraisal is completed.

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5) The taxpayer and the assessor stipulate for purposes of review by the PTABOA that the correct assessed value is the appraised value as determined by the appraisal.
6) The taxpayer and assessor retain the right to initiate a proceeding to review the stipulated determination before the Indiana Board of Tax Review ("IBTR").
7) Any other provision that the Department considers appropriate.

*Note: The Department will be issuing the stipulation agreement form in the near future.

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When the PTABOA receives the completed appraisal pursuant to the agreement, it must enter a stipulated determination of assessed value:

1) based on the agreement of the parties; and
2) equal to the appraised value of the property determined by the appraisal.

Again, the taxpayer or assessor may petition the IBTR for review of the stipulated determination.

(Section 1 of SEA 423 amends IC 6-1.1-15-1, effective July 1, 2015, so that if the PTABOA's determination is in the form of a stipulated determination, notice to the parties must be given no later than 30 days after entry of the stipulated determination.)

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B. Annual Reports of Appeal

Section 4 of SEA 423 introduces IC 6-1.1-28-12, which requires each PTABOA to submit a report to the Department, IBTR, and Legislative Services Agency ("LSA") before April 1 annually (the report to LSA must be in an electronic format under IC 5-14-6). This report documents the notices for review filed with the PTABOA for the preceding year. This statute applies beginning January 1, 2016.

*Note: The Department will be issuing the PTABOA report template in the near future.

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The report must include the following information:

1) The total number of notices for review filed with the PTABOA.
2) The notices of review, either filed or pending during the year, that were resolved during the year by a preliminary informal meeting.
3) The notices of review, either filed or pending during the year, in which a hearing was conducted during the year by the PTABOA.
4) The number of written decisions issued during the year by the PTABOA.
5) The number of notices for review pending with the PTABOA on December 31 of the reporting year.

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6) The number of reviews resolved through a preliminary informal meeting that were resolved
   a) in favor of the taxpayer;
   b) in favor of the assessor; or
   c) resolved in some other manner.
7) The number of reviews resolved through a written decision issued during the year by the PTABOA that were resolved
   a) in favor of the taxpayer;
   b) in favor of the assessor; or
   c) resolved in some other manner.

The report may not include any confidential information.

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C. Notices of the PTABOA Hearing

- Section 5 of SEA 423 amends IC 6-1.1-28-6, effective January 1, 2016, concerning the publication requirements for notice of the annual session of the PTABOA. Now notice must be published in two newspapers of general circulation published in the county (or one if there is only one published within the county) and posted on the county assessor's website.

- Notice must still be given two weeks in advance of the first PTABOA meeting.

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Admission of Appraisal Reports as Evidence:
Effective July 1, 2015, SEA 467 amends IC 6-1.1-15-4 so that at a hearing before the IBTR, the IBTR must admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule is not to be construed to limit the discretion of the IBTR, as trier of fact, to review the probative value of an appraisal report.

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Miscellaneous:

A. Senate Enrolled Act 436

SEA 436 makes numerous changes to the assessment appeal process.

1. Statement of Appeal Rights

Section 12 of SEA 436 amends IC 6-1.1-15-1, effective upon passage of the bill, so that the assessing official must attest on Form 134 ("Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting") that the official described to the taxpayer, the taxpayer's right to a review of the issues by the PTABOA and the taxpayer's right to appeal to the IBTR and Tax Court. The Department has updated Form 134 to reflect this new requirement.

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2. Agreement to Waive Appeal Rights in TIF Districts
   Section 13 adds IC 6-1.1-15-1.5, which allows a taxpayer to have a written agreement with an entity authorized to establish an allocation area ("TIF district") whereby the taxpayer waives the right to appeal the assessment of the taxpayer's property in the allocation area. The Department has issued a separate memorandum on this topic, which is available at http://www.in.gov/dlgf/files/pdf/150518_-_Schaafsma_Memo_-_Legislative_Changes_Affecting_TIFs_and_Certified_Technology_Parks.pdf.

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3. Appeals of Classification of Property
   Section 14 of SEA 436 introduces IC 6-1.1-15-17.1 concerning the burden of proof in an appeal over the reclassification of real property. This amendment is effective retroactive to March 1, 2015. In the case of a change occurring after February 28, 2015 in the classification of real property:
   1) the county assessor or township assessor must, on the notice required by IC 6-1.1-4-22 (Form 11), specify any changes in land classification and the reasons for the change; and

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2) the county assessor or township assessor making the change in the classification has the burden of proving that the change in the classification is correct in any review or appeal under IC 6-1.1-15 and in any appeals taken to the IBTR or Tax Court.

4. Application of Credits to Refunds $100,000 or More
Section 19 of SEA 436 introduces IC 6-1.1-37-14, effective upon passage of the bill. This new statute applies to refunds resulting from appeals for the 2014 assessment date or any prior assessment date.

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If upon conclusion of the appeal the total amount of property taxes owed to the taxpayer is $100,000 or more, the auditor may, instead of a refund, elect to apply credits in equal installments to future property tax installments for the property over a period of not more than five years following the date of the conclusion of the assessment appeal. The auditor may elect to accelerate credits or to provide a full or partial refund within the five year period. This framework does not apply if any refund for a property under appeal has been paid before May 1, 2015. All other provisions of IC 6-1.1 apply regarding the payment of refunds and application of credits. This statute expires December 31, 2019.

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5. Settlement of Appeals
   Section 21 of SEA 436 introduces IC 6-1.5-3-4.5, effective upon passage. Under this statute, the IBTR must recommend that parties to an appeal pending before the IBTR as of May 1, 2015 (and that has not yet received a hearing) settle or mediate that appeal. This statute only concerns appeals where:
   1) the taxpayer's appraisal asserts a value that is more than 25% lower than the value evidenced by the assessor applying the cost approach, less depreciation and obsolescence; and
   2) the taxpayer or the taxpayer's representative appeared before the PTABOA when the appeal was heard by the PTABOA.

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B. House Enrolled Act 1388

Section 15 of HEA 1388 amends IC 6-1.1-15-1 concerning assessment appeals. First, Section 15 amends IC 6-1.1-15-1 to include “a determination concerning a common area under IC 6-1.1-10-37.5” among the bases upon which a taxpayer may seek review by the PTABOA. The Department plans to issue a separate memorandum on this topic. Section 15 also amends IC 6-1.1-15-1 to require the PTABOA to mail notice of the date, time, and place of the PTABOA hearing to the tax representative in addition to the taxpayer and local assessing official. These changes were effective upon passage of the bill.

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- **Refresher of 2014 Legislative Changes:**
  Effective upon passage, SEA 266 - 2014 changes the law with respect to the burden of proof in property tax assessment appeals before the PTABOA.
- Section 1 of SEA 266 repeals IC 6-1.1-4-4.3, enacted during the 2013 regular session, which gave to the county assessor or township assessor (if any) ("local assessor") the burden of proving that an assessment on real property not assessed using the income capitalization approach is correct, if the gross assessed value ("GAV") was reduced by the PTABOA for the latest assessment date covered by the appeal, and the assessment increases the GAV above the reduced value set by the PTABOA.

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- Section 2 amends IC 6-1.1-15-17.2, which places the burden of proof on the local assessor if the assessment that is subject to the appeal is increased more than five percent (5%) over the prior year's assessment for that property.

- In calculating the change in the assessment, the prior year's assessment is the original assessment for that prior tax year; or the assessment for that prior tax year
  - as last corrected by the local assessor;
  - as stipulated or settled during an informal conference with the local assessor; or
  - as determined by the PTABOA under IC 6-1.1-15-1.

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- If the local assessor fails to meet the burden of proof, the taxpayer may introduce evidence to prove the correct assessment. If neither the assessing official nor the taxpayer meets the burden of proof, the assessment reverts to the prior year's assessment.
- Under new subsection IC 6-1.1-15-17.2(d), if the GAV of real property for an assessment date that follows the latest assessment date that was the subject of an appeal conducted under IC 6-1.1-15 increases above the GAV of the real property for the latest assessment date covered by the appeal, the local assessor has the burden of proving the assessment is correct, regardless of the amount of the increase. Subsection (d) does not apply for an assessment of real property valued using the income capitalization approach in the appeal.

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- The amendments to IC 6-1.1-15-17.2 apply to all appeal or reviews pending on the effective date of the amendments made in the 2014 Regular Session, and to all appeals or reviews filed thereafter.
- IC 6-1.1-15-17.2 does not apply to an assessment if the assessment that is the subject of the review or appeal is based on
  - structural improvements;
  - zoning; or
  - uses

  that were not considered in the assessment for the prior tax year.

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- SEA 420-2014: Change in Assessment Date for Tangible Property
- SEA 420 changes the assessment date of real property to January 1 starting with the 2016-pay-2017 tax cycle. March 1 will remain the real property assessment date for the 2014-pay-2015 and 2015-pay-2016 tax cycles.
- The assessment date for mobile homes moves to January 1 starting in 2017 (the pay-2017 cycle). January 15 remains the mobile home assessment date for the pay-2015 and pay-2016 tax cycles.

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Tax Cycle	Real Property Assessment Date	Mobile Home Assessment Date	First Installment of Taxes Due	Second Installment of Taxes Due
2014-pay-2015	March 1, 2014	January 15, 2015	May 10, 2015	November 10, 2015
2015-pay-2016	March 1, 2015	January 15, 2016	May 10, 2016	November 10, 2016
2016-pay-2017	January 1, 2016	January 1, 2017	May 10, 2017	November 10, 2017
2017-pay-2018	January 1, 2017	January 1, 2018	May 10, 2018	November 10, 2018

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- HEA 1266-2014: Section 19 of HEA 1266 amends IC 6-1.1-15-12 regarding the window of time for filing a Correction of Error Appeal ("Form 133"). This change was effective upon passage.
- Under IC 6-1.1-15-12, as amended, a taxpayer is not entitled to the remedies available through a Correction of Error Appeal unless the taxpayer files the appeal:
  1) with the auditor of the county in which the taxes were originally paid; and
  2) within three years after the taxes were first due.

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For example, a taxpayer seeking to file a Correction of Error Appeal concerning his May, 2012 property tax installment has until May 11, 2015 to do so. Indiana Code 6-1.1-15-12, as amended, now mirrors IC 6-1.1-26-1, which allows a person to seek a refund of a tax payment if a claim is filed within three years after the taxes were first due. In sum, a Correction of Error Appeal and corresponding claim for refund must be filed within three years after the taxes were first due.

*Note: The window to file is three years and not three assessment dates or tax cycles.

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III. PTABOA Role/Responsibility:

- The assessor should have an appeal tracking process (see http://www.in.gov/dlgf/files/100201_-_Wood_Memo_-_Assessment_Appeals.pdf) to ensure all appeals are addressed in a timely manner.
- HEA 1001 – 2009 (ss) allows the county commissioners to determine if they want a three (3) or five (5) member PTABOA (effective July 1, 2009).
- The PTABOA must be comprised of individuals "knowledgeable in the valuation of property."

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- Five (5) Member PTABOA:
  - Commissioners appoint three (3) members.
  - County fiscal body (i.e. Council) appoints two (2) members.
  - At least one (1) of the members appointed by the fiscal body must be a Level II or III assessor-appraiser.
  - At least one (1) of the commissioner's appointments must be a Level II or III; however, they may waive this requirement. The county fiscal body may waive this as well.
  - No more than 3 of the 5 members may be of the same political party, and at least 3 of the 5 are residents of the county.

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- Three (3) Member PTABOA
  - The county fiscal body appoints 1 individual who must be a Level II or III assessor-appraiser.
  - The commissioners appoint 2 freehold members. Not more than 2 of the members may be of the same political party and at least 2 of the members are residents of the county.
  - At least 1 of the commissioner's appointments must be a Level II or III; however, they may waive this requirement. The county fiscal body may waive this as well.

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- Compensation & policies are local issues.
- Board members shall receive compensation on a per diem basis for each day of actual service.
- The county council shall fix the rate of compensation.
- The county assessor shall keep an attendance record.
- Certifies the number of days to the county commissioners.

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- The Board has the power to:
  - Subpoena witnesses
  - Examine witnesses, under oath, on the assessment or valuation of property
  - Compel witnesses to answer its questions relevant to the assessment of valuation of property
  - Order the production of relevant papers

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- The Board may hire additional field representatives and hearing examiners to assist the Board in performing its duties and functions.
- Representatives and examiners must be Level II or III certified.
- The number and compensation of representatives and examiners employed are subject to the appropriations for that purpose by the county council.

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- Representatives and examiners are afforded the same powers as members of the Board concerning the review of and hearings on an assessment.
- Representatives and examiners shall report their findings to the Board in writing.
- The Board can accept the representatives and examiner's recommendation or hold further hearings and take additional evidence.
- The Board makes the final decision on each matter.

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- The PTABOA shall, by mail, give notice of the date, time, and place fixed for the hearing to the taxpayer, taxpayer representative (if any – see HEA 1388-Sect. 15), and the county or township official with whom the taxpayer filed the notice for review. (Form 114)
- The PTABOA may not require a taxpayer to file documentary evidence or summaries of statements of testimonial evidence before the hearing.
- Taxpayer may appeal to the IBTR if the hearing is not held by the PTABOA not later than 180 days after filing of the appeal.
- Taxpayer may appeal to the IBTR not later than 45 days after the PTABOA decision.

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So how do I, as a Board member, decide that a prima facie case has been made?

That decision must be determined on a case-by-case basis as the evidence and circumstances on each hearing will vary. Becoming familiar with the available resources, such as IBTR decisions, Tax Court decisions, etc. could be very helpful.

Should the Board reschedule a hearing because the taxpayer is not prepared to properly present the necessary evidence?

This decision would be left up to the Board; however, the taxpayer should be prepared to present a case since it is their appeal so this type of delay should rarely happen.

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We are having a difficult time finding qualified individuals to serve on our PTABOA. Can our prior assessor serve on our PTABOA?

We are not aware of any statutory provision that would prevent a former assessing official from serving on the PTABOA. However, from a public perception perspective, it may not look so good. Please note there is a prohibition on former assessing officials serving as a tax representative in their former jurisdiction.

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What kind of deadline can I impose (or the PTABOA) for a taxpayer who is having an extremely difficult time getting an appraisal or brokers price opinion?

The only time stipulation is found in IN Code 6-1.1-15-1 (n), which states the PTABOA must render a decision not later than 120 days of the hearing. Hence, deference is given to local control, and if the assessor or the PTABOA wanted to set a deadline of x number of days to produce evidence/documentation, it would be within their (or the PTABOA's) right to set a timeframe. The timeframe should be reasonable (i.e. don't say we need your appraisal in 1 day). A 30 to 45 day timeframe is reasonable, especially if the taxpayer filed the appeal some time ago.

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Should the PTABOA visit the properties on appeal?
Conducting an on-site inspection would be a rare occurrence when considering the Board's use of time and budgetary constraints.

What constitutes a quorum for the PTABOA?
IC 6-1.1-28-1 states that a majority of the PTABOA that includes at least one (1) certified level two or level three assessor-appraiser constitutes a quorum.

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Is the determination based on the majority of the quorum or the whole board?

IC 6-1.1-28-1(d) states, in pertinent part: "Any question properly before the board may be decided by the agreement of a majority of the ***whole board***."

Can a taxpayer refuse to discuss the issues with a representative or examiner and request a hearing before the Board?

Yes. However, taxpayers may find that meeting with a representative or examiner will expedite the appeals process.

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IV. Common Issues/Problems:

- **Evidence:** What type of evidence is required in the appeal process?
- There are a variety of things a taxpayer may use/request to be considered in the appeals process, including:
  - A USPAP compliant appraisal (NOTE: An appraisal is not required in the appeal process).
  - Actual construction costs (both Direct and Indirect).
  - The sale of the subject property (if an “arms-length” transaction).
  - Sales of comparable properties.

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A. Evidence: NOTE: Per IN Code 6-1.1-15-18 (below), there are restrictions on the proximity of comparable properties:

IC 6-1.1-15-18

Value in use; evidence of comparable properties

Sec. 18.

(a) This section applies to an appeal to which this chapter applies, including any review by the board of tax review or the tax court.

(b) This section applies to any proceeding pending or commenced after June 30, 2012.

(c) To accurately determine market-value-in-use, a taxpayer or an assessing official may:

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A. Evidence: NOTE con't:

(1) in a proceeding concerning residential property, introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district; and

(2) in a proceeding concerning property that is not residential property, introduce evidence of the assessments of any relevant, comparable property.

However, in a proceeding described in subdivision (2), preference shall be given to comparable properties that are located in the same taxing district or within two (2) miles of a boundary of the taxing district.

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A. **Evidence:** NOTE con't:
   - The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices. As added by P.L.146-2012, SEC.5.
   - "A party must explain how the evidence relates to the appealed property's market value-in-use as of the relevant valuation date. O'Donnell v. Dep't of Local Gov't Fin., 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also Long v.Wayne Twp. Ass'r, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).."
   - "The taxpayer must explain how each piece of evidence relates to the requested assessment. Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004)."

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A. **Evidence:** NOTE con't:
   - An assessor cannot simply say that they reviewed the taxpayer's evidence and decided that it was not valid.
   - They must be able to challenge it based on its merit and be able to demonstrate that the evidence lacks credibility.
   - This challenge could be accomplished by identifying specific flaws in the taxpayer's evidence or by submitting evidence to demonstrate the flaws.

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A. **Evidence:** NOTE con't:
   - Appraisals need to be analyzed to determine sales comparables being used in relationship to subject property. Adjustments being made to these sales comparables also should be analyzed.
   - For income producing properties, income and expense statements.

B. **Specific Methodology:** Some property types, such as Rental Properties, Low Income Housing, and Golf Courses are statutorily required to be assessed using prescribed methods (e.g., the income approach to value).

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C. **Who Can File an Appeal?:** The taxpayer of record on the assessment date. Additionally, the Indiana Board of Tax Review (IBTR) has previously ruled that others with an interest in the property may file an appeal (i.e., a person other than the taxpayer on the assessment date may file an appeal if they are responsible for the property taxes due for that assessment date, even though they may not have owned the property on the assessment date).

D. **What if an appeal is not timely filed?:** Although taxpayers ultimately may not be successful with their appeal, their due process rights should be upheld, and they should be allowed to file an appeal.

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E. **Preliminary Hearing Procedures:** Can the assessor have a set amount of time for each preliminary hearing (e.g., 15 minutes)?
   Great deference is given to local control, meaning the local officials can determine a set timeframe, hearing schedule, or procedures for the preliminary hearing. Also, the PTABOA may determine their own procedural rules.
F. **Taxpayer Representative Notification:** Should the taxpayer representative be given notification of the PTABOA hearing? Could the taxpayer representative be assessed a $50 penalty as a “no-show” even though he/she might not have received notice of the hearing?

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F. Taxpayer Representative notification: con't:

IC 6-1.1-15-1(k) If:

1. subsection (i)(2) applies; or
2. the county board does not receive a form referred to in subsection (i) not later than one hundred twenty (120) days after the date of the notice for review filed by the taxpayer under subsection (c) or (d); the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice. **The county board shall, by mail, give at least thirty (30) days notice of the date, time, and place fixed for the hearing to the taxpayer, taxpayer representative (if any), and the county or township official with whom the taxpayer filed the notice for review.** (Emphasis added)

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F. Taxpayer Representative notification: con't:
Hence, the local officials are required to notify the taxpayer representative (if any) of the hearing. If the taxpayer or tax representative do not show up for the hearing, they could receive a $50 "no show" penalty.

G. CPA Representation: Can a CPA file appeals on a taxpayer's behalf on real estate?

A CPA may only represent a client in a matter that relates only to personal property taxation. Otherwise, in order to represent a client, the CPA would need to be a certified tax representative, and would need to complete/file a Power of Attorney form.

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H. Assessment Increases as a result of an appeal: Can an assessment increase as a result of an appeal?

Yes, per Indiana Code 6-1.1-9-4 (a), undervalued or omitted property may be increased within three years after the assessment date for that prior year (as long as proper notice is given to the taxpayer). The assessing official should; however, be prepared to defend the increase in the assessed value and possibly explain why the assessment has been increased.

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V. Form 11 vs. Tax Statement:

When can a Tax Statement be used in lieu of a Form 11 to file an appeal?

IC 6-1.1-4-22

Amounts of assessment or reassessment; notice

(a) If any assessing official assesses or reassesses any real property under this article (including an annual adjustment under section 4.5 of this chapter), the official shall give notice to the taxpayer and the county assessor, by mail or by using electronic mail that includes a secure Internet link to the information in the notice, of the amount of the assessment or reassessment.

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b) Each township or county assessor shall provide the notice required by this section by the earlier of:
   1. ninety (90) days after the assessor:
      A. completes the appraisal of a parcel; or
      B. receives a report for a parcel from a professional appraiser or professional appraisal firm; or
   2. April 10 of the year containing the assessment date for which the assessment or reassessment first applies, if the assessment date occurs in a year that ends before January 1, 2016, and February 10 of the year containing the assessment date for which the assessment or reassessment first applies, if the assessment date occurs in a year that begins after December 31, 2015.

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c) The notice required by this section is in addition to any required notice of assessment or reassessment included in a property tax statement under IC 6-1.1-22 or IC 6-1.1-22.5.

d) The notice required by this section must include notice to the person of the opportunity to appeal the assessed valuation under IC 6-1.1-15-1.

e) Notice of the opportunity to appeal the assessed valuation required under subsection (d) must include the following:

(1) The procedure that a taxpayer must follow to appeal the assessment or reassessment.

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2) The forms that must be filed for an appeal of the assessment or reassessment.
3) Notice that an appeal of the assessment or reassessment requires evidence relevant to the true tax value of the taxpayer's property as of the assessment date.
(Formerly: Acts 1975, P.L.47, SEC.1.) As amended by Acts 1977, P.L.64, SEC.2; P.L.6-1997, SEC.19; P.L.146-2008, SEC.76; P.L.136-2009, SEC.4; P.L.112-2012, SEC.16; P.L.111-2014, SEC.13.

Appeals

IC 6-1.1-15-13

Tax bill as notice

Sec. 13. If notice of the action of a board or official is not otherwise given in accordance with the general assessment provisions of this article, the receipt by the taxpayer of the tax bill resulting from that action is the taxpayer's notice for the purpose of determining the taxpayer's right to obtain a review or initiate an appeal under this chapter.
(Formerly: Acts 1975, P.L.47, SEC.1.)

However, the fact that a tax bill serves as a notice of assessment when a Form 11 is not sent, does not relieve the assessing official of the obligation to send a notice of assessment.

Appeals

VI. Frequently Asked Questions:

Question: We have a situation where a property has been conveyed from one owner to another during the appeals process. The appeal dates are 2010, 2011, 2012, 2013, and 2014. In a conversation with the new purchaser, their representative told me that they were unaware of any appeals on the property.

Are the appeal rights conveyed with the property along with any subsequent refunds or additional taxes? Or is it a case that these rights are retained by the seller unless they are set out in the purchase agreement governing the transaction?

Appeals

In this situation, the property sold for significantly more than the assessment values and we want to be on firm ground as we move forward to a resolution of the appeals.

Answer: Indiana Code 6-1.1-15-12 (see below) states that the "taxpayer" is the one who appeals; we've understood this to mean that the person on the tax duplicate at the time the appeal is filed is the one with authority to file that appeal. Additionally, the Indiana Board of Tax Review (IBTR) has stated in their decisions that if a taxpayer is liable for the taxes, even if they did not own the property on the assessment date, they can file an appeal.

Appeals

Hence, I am not aware of anything that would prohibit the new owner continuing on with the tax appeal process. As far as any refunds or additional taxes, that should have been addressed in the purchase agreement. Since deference is given to local control, and each case is fact sensitive, I would suggest consulting with your county attorney for specific legal advice on how best to proceed with this matter.

Appeals

Question: Follow-up: We agree that the new owner, having purchased the property fee simple, should have rights to pursue any open appeals. The previous owners feel that they also should have the rights to pursue their open appeals and receive refunds if successful. Our questions is, can the previous owners of a property make decisions about prior year values during the appeal process unilaterally of the current owners? What if the appeal litigation has effect of the current or future value – do the previous owners still have unilateral decision making power? What happens if the new and old owners want to handle the open appeals differently? What happens if the taxes were split at closing for a year under appeal – do both parties share decision making power and get a portion of the refund?

Appeals

Answer: I think the property owners (past and present) would need to look at the purchase agreement or contract to see if that addresses whether the previous owner has surrendered its rights and claims associated with the property. I've had the question come up recently about whether the county can refund the party that actually paid the taxes (even if that party no longer owns the property) or if the refund has to go to the current owner. The State Board of Accounts (SBOA) is okay with the refund going to the party that paid the taxes even if that party no longer owns the property, so long as that party can document that they made the payment.

Appeals

Of course the question at hand is a little different – can the previous owner continue to participate in the appeal even though they no longer own the property. The statute generally refers to the "taxpayer" as the appeal process proceeds. Maybe it comes down to the previous and current owners agreeing which of them will speak for the property? On the other hand, if the previous owner tries to meddle, perhaps it would carry the burden of showing how it's the taxpayer. I presume it would point to IC 6-1.1-2-4 for support.

Appeals

Question: What is the time limit to approve or disapprove a Correction of an Error (Form 133) before it would go to the PTABOA?

Answer: I know that for a 130 appeal, there are more specific deadlines and timeframes, but I don't see the same provisions for 133 appeals. I think the default would probably be a "reasonable time" standard.

I'll note the statute says that the auditor "shall correct" or "shall refer" if the correction is approved/disapproved, respectively, so one could argue that the action is supposed to be immediate.

Appeals

Question: If a taxpayer has an informal review for an appeal and they have a reduction in value, do we hold the value for two years? I have been told it was just for appeals that went to the PTBOA.

Answer: Each year stands alone. Hence, if you have a taxpayer that appeals for say March 1, 2014, and as part of the informal conference, you reach an agreement, assuming the PTABOA agrees to the change in assessed value, that value will be in effect for the March 1, 2014 assessment date. For the March 1, 2015 assessment date, there is a possibility that the assessed value could remain the same as the agreed to change for 2014; however, there is no guarantee that it will be the same.

Appeals

The assessor should be reviewing market value-in-use information to determine if the assessment should change or stay the same. Please note that last year, there was a change in the burden of proof for changes in the assessed value (please see http://www.in.gov/dlgf/files/pdf/140507_-_Vincent_Memo_-_Burden_of_Proof_in_Assessment_Appeals_Senate_Enrolled_Act_266-2014.pdf). There was also a change in 2013 (see http://www.in.gov/dlgf/files/pdf/130606_-_Vincent_Memo_-_SEA_152_Burden_of_Proof_in_Certain_Appeals_Interest_on_Refunds_and_Payments.pdf).

Appeals

Question: For appeals I wanted to know if we could use the homeowner's insurance policy as another resource for when I have to defend the assessed value? In the 2015 ratio study, some of my neighborhoods went up 4-7%. While I have plenty of sales to justify the increase I'm looking for another resource. Any information would be greatly appreciated.

Answer: A homeowner's insurance policy could possibly be used as a resource; however, I would be very careful in its use, or the reliance on it as a indicator of market value-in-use.

Appeals

If a property were to be appealed, the greatest weight would be given to the sale of the subject property (if it sold, and assuming it was an arms-length transaction, exposed to the open market, neither party operating under duress, etc.), followed by sales of comparable properties, and appraisal(s). While a homeowner's insurance policy would indicate what the property is insured for, it would not necessarily reflect what its market value-in-use may be, or how it might compare to similar/comparable properties in the neighborhood.

Since you have "plenty of sales to justify the increase," assuming they are valid sales, I would give greater credence to the sales to support the change.

Appeals

Question: We have a petitioner that filed appeals on a parcel for the years 2009 & 2010. Both years went before PTABOA and were denied. The petitioner filed a Form 131 for the 2009 appeal only to the IBTR. If his 2009 value gets lowered, will we have to lower his 2010 value as well even though he did not file that year at the IBTR?

Answer: Each year stands alone; however, depending on the nature of the assessment and the appeal, the assessment may need to be changed. For example, if the taxpayer appealed the grade, condition, square footage, etc. of the property, and the IBTR agreed with taxpayer, the base assessment may need to be changed going forward (barring any changes).

Appeals

The IBTR will usually indicate what, if any, changes need to be made (either for prior years, the current year, or for the assessments after the current year/appeal). If the appeal was just about the market value-in-use, and 2009 was the only year in question, if the IBTR did not specifically state that the following year needed to be changed, then you would not necessarily need to lower the 2010 assessment.

Over the past couple of years, the assessment and appeal statutes have changed. Hence, if the 2009 assessment were to be changed, and you changed the 2010 assessment, if the change is more than 5%, you would have the burden of proof.

Appeals

Question: Recently I attended a PTABOA hearing where there was a consultant who did most of the talking for the county PTABOA. It was my understanding that the PTABOA Board could hire field representatives and hearing examiners to assist the Board. This consultant who was doing most of the talking was also one of the owners of the company who was hired by the county to do their assessing. Many times he asked if I could see this condition problem from the outside of the house. Many times he was intimidating.

My question is this: Is the hired hearing examiner for the PTABOA Board suppose to conduct the PTABOA hearings? Or is he suppose to examine the merits of an appeal?

Appeals

Answer: First, great deference is given to local control, meaning in the absence of specific legislative or administrative rule regulations, the local officials are empowered to administer the property tax assessment and appeal process. Per Indiana Code 6-1.1-28-10, you are correct that the county, on behalf of the PTABOA, may employ field representative and hearing examiners. IN Code 6-1.1-28-11 defines the powers and duties of the field representatives and hearing examiners.

Appeals

Assuming you are referring to the formal PTABOA hearing, and not necessarily the informal hearing process, whether the hearing examiner can “conduct the PTABOA hearings” is subject to local control. I believe the intent of IC 6-1.1-28-11 to conduct hearings by the hearing examiner was geared more toward the informal hearing process. However, I could not find any prohibition against the hearing examiner conducting the PTABOA hearing. If there is a question on the legality of the hearing examiner’s role, it would be best addressed by the county attorney.

Appeals

VII. Questions

Contact the Department

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